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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

JORGE SALDIVAR,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

Nos. 05-71316

05-73569

Agency No. A93-484-075

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 13, 2007^{**}

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges.

In these consolidated petitions, Jorge Saldivar, a native and citizen of Mexico, seeks review of the Board of Immigration Appeals' ("BIA") order

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

dismissing his appeal from an immigration judge's ("IJ") order denying his application for cancellation of removal, and the BIA's order denying his motion to reopen. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review de novo claims of constitutional violations in immigration proceedings. *See Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). We review for abuse of discretion the denial of a motion to reopen. *See Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). In No. 05-71316, we grant the petition for review and remand and in No. 05-73569, we dismiss the petition for review.

Saldivar's attorney, Martin Guajardo, failed to appear at his merits hearing or send substitute counsel. Saldivar told the IJ he did not want to proceed without counsel, yet the immigration judge denied his request for a continuance and allowed him to be cross-examined without counsel. We agree with Saldivar that his due process rights were violated. *See Hernandez-Gil v. Gonzales*, 476 F.3d 803, 806 (9th Cir. 2007) (finding that petitioner did not waive his statutory right to counsel where he told the IJ that he did not want to proceed without his lawyer and requested a continuance so his lawyer would be present).

Accordingly, we grant the petition for review in No. 05-71316 and remand to the agency for further proceedings. *See INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam).

Because we grant relief in No. 05-71316 and remand, we do not reach any contentions in No. 05-73569.

The government's motion to withdraw argument is granted.

No. 05-71316: PETITION FOR REVIEW GRANTED; REMANDED.

No. 05-73569: PETITION FOR REVIEW DISMISSED.